IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2482 OF 2006

Govinddas Shrinarayan Maheshwari ... Petitioner

Vs.

The State of Maharashtra & Anr. ... Respondents

Mr. Ganesh Gole for the petitioner.

Ms. M.M. Deshmukh, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 20TH DECEMBER, 2006.

P.C. :-

1. The petitioner is accused 2 in the complaint filed by respondent 2 in the Court of Judicial Magistrate, First Class at Ichalkaranji for offences punishable under section 138 read with section 141 of the Negotiable Instruments Act, 1881. The petitioner is aggrieved by the order dated 11/2/2004 passed by the Judicial Magistrate, First Class, Ichalkaranji, issuing process against him and the order dated 18/9/2006 passed by the Additional Sessions Judge, Ichalkaranji, dismissing the revision application filed by the petitioner challenging the

order passed by the learned Magistrate issuing process.

2. I have heard Mr. Gole, the learned counsel appearing for the petitioner. Relying very heavily on the judgment of the Supreme Court in ***S.M.S. Pharmaceuticals Limited v. Neeta Bhalla & Anr., 2005 (4) Mh. L.J. 731***, the learned counsel contended that in the complaint, the complainant has not stated that the petitioner was in charge of and responsible for the conduct of the business of the company at the time when the offence was committed. He submitted that the averments made in the complaint are vague and, therefore, no process could have been issued by the learned Magistrate. The learned counsel also relied on the judgment of the learned single judge of this court in ***Suman Madanlal Bora v. State of Maharashtra & Ors., 2006 (4) Mh. L.J. 369***, and contended that if the partners are not shown on the date of the commission of offence as in charge of and responsible to or conducting business of the firm, the complaint must be quashed against them. The learned counsel then relied on the judgment of this court in ***D.P. Jain & Ors. v. Green Earth Asphalt And Power Pvt. Ltd., 2006 (5) Mh.L.J. 705***. He contended on the basis of this judgment, that a complaint based on vague statement that one of the partners had signed the cheque on behalf of all the partners and the cheque was issued towards the amount due and payable by all the partners is not a complaint in the

eye of law. He submitted that, therefore, the learned Magistrate erred in issuing process and the learned Sessions Judge erred in not quashing the order of issuing process.

3. I am not in agreement with the learned counsel for the petitioner. In my opinion, the present complaint is not covered by the judgment of the Supreme Court in ***S.M.S Pharmaceutical's case (supra)***. In the complaint, the complainant has averred as under :

> *"1. ..... The accused No.1 and 2 are the partners of S.M. Exports. The accused No.1 & 2 are looking over the said business and both are liable to all transactions of S.M. Exports. Accused No.1 & 2 are incharge of & are responsible for the conduct of business of S.M. Exports.*
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> *2. The relations between complainant and accused are friendly relations. From time to time accused have purchased cloths from complainant by keeping a credit account with the complainant. An amount of Rs.6,32,691/- is due from the accused No.1 & 2 on the sadi account. The accused No.1 & 2 are Jointly and Severally liable and responsible for the same. The complainant has severally demanded the due amount on the credit account of the accused but the accused have failed and neglected to pay the same. At last the accused No.1 & 2 have admitted the total due amount to the complainant and for the discharge and satisfaction of the total dues on the credit account of accused No.1 & 2, the accused No.1 had issued a cheque to the complainant drawn on the bank State Bank of India cantonment Kanpur 208004 of*

Rs.1,00,000/- dated 25/06/2003 bearing cheque No.182716 as a part payment. At the time of issuance of the cheque the accused No.1 & 2 have assured the complainant to honour the abovesaid cheque on given date. By keeping faith and belief on the words of accused the complainant has accepted the abovesaid cheque from the accused.

3. As per the request of the accused No.1 & 2 the complainant has presented the abovesaid cheque on 20/11/2003 in the bank for encashment with their bankers Shri Shivneri Sahakari Bank Ltd., Ichalkaranji which is returned unpaid by the bank with remarks "Exceeds Arrangement" and the same is intimated by the Bank to the complainant on 28/11/2003. Thus the cheque given by the accused got bounded. Hence, the complainant ahd issued a Registered A/D. Notice to the accused No.1 & 2 through Adv. P.A. Upadhye on 26/12/2003. The said notices have been received by the accused on 31/12/2003. After the receipt of the notice, the accused No.1 & 2 did not pay the cheque amount to the complainant within the period of 15 days from the receipt of the notice. Thus, the accused No.1 & 2 became liable to be prosecuted for and on conviction be punished for the said offence committed u/s. 138 r/w. Sec. 141 of Negotiable Instruments Act (Amended)."

4. The above averments make it clear that the case of the complainant is that accused 1 and 2 are in charge of and responsible for the conduct of business of S.M. Exports. They are looking after the said business and they are liable for all transactions of S.M. Exports. It is further stated that from time to time the accused have purchased cloth from the complainant and that an amount of Rs.6,32,691/- is due from

accused 1 and 2 and accused 1 and 2 are jointly and severally liable and responsible for the same. It is stated that accused 1 and 2 have admitted the liability and at the time of issuance of cheque, accused 1 and 2 have assured the complainant to honour the said cheque on a given date and the complainant believing the words of the accused, has accepted the cheque. So far as the presentation of the cheque is concerned, it is stated that at the request of accused 1 and 2, on 20/11/2003, the complainant has presented the said cheque and within a span of eight days, the bank returned the cheque to the complainant with the remark “Exceeds Arrangement”. All these averments clearly indicate that accused 1 and 2 are looking after the business and are responsible for the conduct of the business of the company and at the time of issuance of the cheque, accused 1 and 2 appear to be present and they have given assurance to honour the said cheque and it is at the request of the accused 1 and 2 that the cheques were presented on 20/11/2003 for encashment.

5. In my opinion, sufficient averments are made in the instant complaint prima facie indicating the involvement of accused 1 and 2. The judgments cited before me will have to be confined to their own peculiar facts and circumstances and are not applicable to the present case. No case is made out for interference. Petition is rejected.

[SMT. RANJANA DESAI, J.]